

Finding of No Significant Impact

Issuance of a Permit under section 10(a)(1)(B) of the Endangered Species Act to the Massachusetts Division of Fisheries and Wildlife

The U.S. Fish and Wildlife Service (Service) proposes to issue an incidental take permit (ITP) to the Massachusetts Division of Fisheries and Wildlife (MADFW) in association with implementation of the "Massachusetts Division of Fisheries & Wildlife (DFW) Habitat Conservation Plan for Piping Plover" (HCP or Plan). As discussed in the HCP, the MADFW proposes to deviate from State and Federal guidelines when managing some recreational activities on Massachusetts beaches during the piping plover (*Charadrius melodus*) nesting season. These deviations increase the potential for take of the federally threatened piping plover. The MADFW submitted an ITP application under section 10(a)(1)(B) of the Endangered Species Act (ESA) on August 7, 2015, and a final HCP on June 27, 2016, to the Service. The intent of the ITP is to provide statewide authorization to the MADFW and to Plan participants (MADFW-approved beach managers) in the event that piping plovers are incidentally taken during implementation of activities covered by the HCP.

The Plan's stated purpose is to advance piping plover conservation and recovery in Massachusetts while maintaining and improving the public access, recreational opportunities, and economic activity associated with the State's beaches. The HCP serves as an umbrella plan whereby Plan participants can receive incidental take coverage by opting into the Plan via certificates of inclusion. The covered activities would expose up to 7 percent of piping plover breeding pairs in Massachusetts to incidental take according to a sliding scale of take allowances that tracks the size of the Massachusetts piping plover population. The Plan also includes a threshold (500 breeding pairs) at and below which no covered activities or incidental take would occur. The HCP describes the measures the MADFW will implement to avoid, minimize, and mitigate impacts to piping plovers. Specifically, to address the ITP issuance criteria, the primary mitigation measure will be implementation of a predator management program on Massachusetts beaches. At a minimum, the MADFW would implement predator management to benefit 2.5 pairs of plovers for every plover nest, brood, or territory exposed to incidental take and an additional 0.5 breeding pairs for every breeding pair exposed to the *Use of Roads and Parking Lots in the Vicinity of Unfledged Chicks* covered activity. This program is expected to increase piping plover productivity at mitigation sites and is specifically designed to offset any loss of piping plover productivity in Massachusetts associated with the covered activities. In addition to the predator management program, the MADFW and/or Plan participants would implement education, outreach, increased law enforcement, and nesting habitat improvements on a site-specific basis. These actions are intended to complement the predator management program and contribute to a net conservation benefit to piping plovers.

As part of the evaluation of whether to issue an ITP, the Service is required to analyze the effects of permit issuance in accordance with the National Environmental Policy Act of 1969 (NEPA). To comply with NEPA, the Service prepared an environmental assessment (EA) that evaluates the potential direct, indirect, and cumulative impacts of the Service's proposed action (issuance of an ITP with implementation of the HCP), a status quo (no action) alternative, and an alternative that includes a shorter permit term.

The environmental effects of the proposed action were considered in the final EA (dated July 2016) and were demonstrated to be minor and insignificant to the human environment (40 CFR 1508.27). The EA analyzed potential impacts on the following resource areas: biological resources (plants,

wildlife, and their habitat), coastal resources, recreation, transportation and traffic, and socioeconomics. Additional resource areas were considered but dismissed from detailed analysis, as discussed in the EA. Those resources include air quality, climate, cultural resources, farmlands, geology and soils, hazardous materials, land use, noise, public utilities, visual resources, water resources, and environmental justice.

Under the proposed action, some beach activities would be conducted under certain circumstances that would not be conducted under the no action alternative. These include (1) recreational and beach operation activities that occur in areas of the beach that otherwise would be protected by symbolic fencing around nests or proactive symbolic fencing of suitable piping plover habitat; (2) oversand vehicle use in areas that may normally be closed due to the presence of unfledged piping plover chicks; (3) use of roads or parking lots that otherwise may be closed to protect nesting or adult plovers; and (4) a conservation and mitigation strategy that includes predator management, education, outreach, increased law enforcement, and in some circumstances, pilot piping plover nesting habitat improvement projects. The HCP includes avoidance and minimization measures associated with the Plan's covered activities. As described in the EA, individual plovers could be killed; however, overall impacts to the piping plover population are expected to be minor and insignificant. Impacts on other biological resources as well as the other elements of the human environment analyzed in the EA are expected to be minor and insignificant.

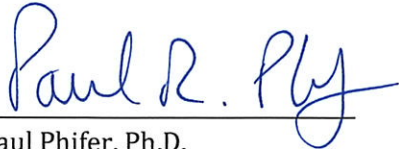
Based on our review of all the effects described in the final EA and the Council on Environmental Quality guidance on determining significance (40 CFR 1508.27(b)(1) through (10)), the Service concludes that an EA is the appropriate NEPA document for this project. The Service made this determination because the effects of the proposed action:

1. Do not include any significant beneficial or adverse impacts;
2. Do not significantly affect public health or safety;
3. Do not affect historical or cultural resources, park lands, prime farmlands, wetlands, wild and scenic rivers, or ecologically critical areas;
4. Are not likely to be highly controversial;
5. Are not highly uncertain and do not involve unique or unknown risks;
6. Do not establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration;
7. Are not related to other actions with individually insignificant, but cumulatively significant, impacts;
8. Will not adversely affect districts, sites, highways, structures, or objects listed in or eligible for listing in the National Register of Historic Places or cause loss or destruction of significant scientific, cultural, or historical resources;
9. Do not adversely affect the piping plover to a significant degree; and
10. Do not threaten a violation of Federal, State, or local law or requirements imposed for the protection of the environment.


The Service published a notice of availability for the draft EA, HCP, and ITP application in the *Federal Register* on January 21, 2016, for a 30-day comment period. The Service received 129 individual

comment submissions pertaining to the HCP and/or the EA. Responses to substantive public comments on the draft EA and HCP are included as appendix B to the final EA.

Based on review and evaluation of the attached final EA and supporting documents, the Service has determined that the action is not a major Federal action that would significantly affect the quality of the human environment, pursuant to the provisions of section 102(2)(c) of the NEPA. As a result, the preparation of an environmental impact statement for the proposed action is unnecessary.

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Paul Phifer, Ph.D.
Assistant Regional Director, Ecological Services
Northeast Region

A handwritten date in blue ink that reads "7/8/16". The date is written in a simple, legible style.

Date

